IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Writ Petition No. 23l8 of l990

Shiv Kumar Tulsian . petitioner

vs

Union of India and ors.. respondents

Mr H.S.Thakkar i/b Mahesh Jani for petitioner

Mr. Suresh Kumar with D.A.Dubey for respondent no.l

Mr J K Mistry i/b Crawford Bailey & Co for respondent no. 2

Ms Deepa Chavan i/b Little and Co for respondent no. 3

CORAM;A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 24.2.2005

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. Heard the learned counsel for the parties.

2 The challenge in this petition is to the amalgamation of Hindustan Commercial Bank Ltd with Punjab National Bank under section 45 of the Banking Regulations Act, l949,hereinafter referred

to as the said Act. The scheme of amalgamation was prepared by the respondent no. 2 Reserve Bank of India in exercise of power conferred on it by section 45(4) of the said Act. The said draft scheme was duly sent to the transferor bank . to the transferee bank as required under section 45(6) inviting their objections and suggestions to the said scheme. After having considered the suggestions and objections received in regard to the said scheme the respondent no. 2 had modified that scheme and forwarded it to the Central Government for sanction. In exercise of powers conferred under sub-section (7) of section 45 of the said Act, the Central Government sanctioned the scheme on and subject to the terms and conditions mentioned therein.

3. Petitioner nos.l and 2 are the share holders of the Hindustan Commercial Bank Ltd. The petitioners challenged the draft scheme by filing Writ Petition No. 2l09 of l996 in this court and the same was dismissed by the division bench on 3.l2.l986. Being aggrieved by the said order the petitioners filed Special Leave Petition to the Supreme Court. After hearing of the Special Leave Petition the Supreme Court passed order which reads as under:

" Mr Sorabjee appearing for the Reserve Bank of India, has told us that even after the amalgamation takes place, separate accounts will be maintained in regard to the transaction of the petitioner Bank for full year to enable the shareholders and others connected with the banking transactions of the merging bank to work out their rights, if any. The representation already made on behalf of the management of the Hindustan Commercial Bank may be supplemented by a further representation within a fortnight from today and if there is any such representation the same would be given full consideration in the hands of the Reserve Bank of India . The Reserve Bank of India shall furnish within one week from today the substance of the inspection report to the Attorney of the petitioners at Bombay to enable the taking of a decision as to whether a supplementary representation is necessary. Hearing of the representation as also the objections to the scheme be disposed of expeditiously".

4. The above order of the Supreme Court was passed on l8.l2.l986. On the same day the Central

Government sanctioned the scheme of amalgamation on l9.l2.l986.While doing so the following two paras were incorporated in addition to the draft scheme. The said two paras read as under:

> "AND WHEREAS the Reserve Bank of India after having sent the said scheme in draft to the Bank concerned in accordance with the provisions of sub- section (6) of section 45 and after having considered the suggestions and objections received in regard to the said scheme has modified that scheme and forwarded it to the Central Government for sanction.
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> The Central Government may if it is satisfied that it is necessary so to do, modify, vary or withdraw this scheme in the light of the observations made by the Hon‘ble Supreme Court on l8.l2.l986 while dismissing the Special Leave Petition Nos. l572l of l986 and l5085 of 86 filed by Shri S.K.Tulsian and others".

5. Pursuant to the liberty granted by the Supreme Court the petitioners have submitted their objections to the scheme.The objections were

considered by the Reserve Bank of India and personal hearing was granted to the petitioners on l7.8.l987 and thereafter the objections have been forwarded by the Reserve Bank of India to the Central Government. The learned counsel for the Central Government was unable to state whether the Central Government has dealt with these objections. In any event he submitted that the Central Government will consider the objections in the light of the order passed by the Supreme Court on l8.l2.l986. We direct the Central Government to consider the objections of the petitioners to the said scheme and take appropriate decision in accordance with law within a period of 6 months from today. We make it clear that all contentions on merits are left open to the parties.

Writ Petition is accordingly disposed of.